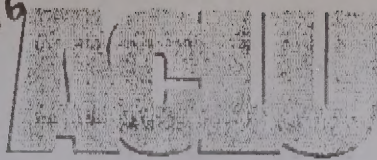


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AMERICAN CIVIL LIBERTIES UNION OF COLORADO

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Amendment 2 Opposition

*Excerpts from selected amici curiae filed before the
United States Supreme Court*

"Under the Amendment, gay men, lesbians, and bisexuals would be the only group in the State of Colorado that could not seek a remedy at law for unjustified adverse treatment.

"Amendment 2 does not rationally advance any legitimate government interest and cannot survive scrutiny even under the most lenient level of equal protection review...

"Before the trial court, Petitioners described Amendment 2 as serving (a) state interest in the 'well-being of our children. In fact the proponents of Amendment 2 played upon popular myths equating child molesters with gay men to fuel their campaign. their campaign literature urged voters to say 'no to sexual perversion with children-vote YES! on Amendment 2!' ... if the purported state interest in protecting children has any relevance to this case, it is in exposing the fear- and prejudice-based appeals used by supporters of Amendment 2 to provoke a visceral, negative reaction."

- The American Bar Association

"Colorado's Amendment 2 constitutes a per se violation of the Equal Protection Clause of the Fourteenth Amendment, which provides that '[n]o state shall...deny to any person within its jurisdiction the equal protection of the laws.' That command is violated when a state's constitution renders some persons ineligible for 'the protection of the laws' from an entire category of mistreatment- here, the mistreatment of discrimination, however invidious and unwarranted..."

"Amendment 2, of course, is far more offensive to equal protection than any mere omission or refusal to protect; it embodies a deliberate commitment, embedded in the fundamental law of the State of Colorado, to make the full reach of the state's system for making and enforcing laws an regulations available only to some of the state's people and not selected and specified others."

-Laurence H. Tribe, Tyler Professor of Constitutional Law, Harvard Law School, et. al.

"Colorado has categorically prohibited its government from protecting a group of citizens from any form of discrimination. the discrimination may be public or private. It may be in housing,

employment, and public accommodation; in the provision of governmental benefits and services; or in any other area or form open to the imagination of private citizens and public officials alike. No segment of life's activities is spared from the amendment's indiscriminate reach. Amendment 2 stands as nothing more refined than a blanket endorsement of discrimination for the sake of discrimination, one that elevated private discrimination against one group of citizens to the status of a constitutional right...

"For all other groups... when they need legislation or policies directed to the interests they share by virtue of their distinguishing personal characteristics (age, marital status, mental or physical disability), Colorado's government has the power to protect them. But when the shared personal characteristic is gay, lesbian, or bisexual orientation, Colorado's government is no longer the government to which they may turn.

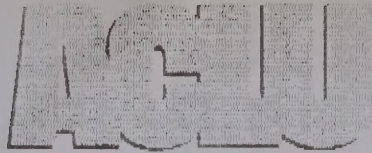
"A policy choice that reduces to a bare dislike for, disapproval of, or willingness to harm any group is constitutionally indefensible..."

-The States of Oregon, Iowa, Maryland, Massachusetts, Minnesota, Nevada, Washington, and The District of Columbia.

"Research has shown that many people base their opinions about gay people on an entrenched set of negative assumptions... For example, although gay men have been stigmatized with the allegation that they are disproportionately responsible for child sexual abuse, there is not evidence of any positive correlation between homosexual orientation and child molestation.

To the extent that Amendment 2 rests on baseless stereotypes about gay people, and reflects this sort of rooted antipathy still common in our society, it threatens to compound the serious problems gay people face as a result of irrational discrimination, and the decision of the Colorado Supreme Court should be affirmed."

- The American Psychological Association, The American Psychiatric Association, The National Association of Social Workers, Inc., and The Colorado Psychological Association.



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Amendment 2 Timeline

- Fall 1990 Meetings are held to discuss an anti-discrimination ordinance for Colorado Springs. Documented evidence of discrimination based on sexual orientation in housing, employment and public accommodation is presented to the Colorado Civil Rights Commission.
- March 1991 Kevin Tebedo and Tony Marco found Colorado for Family Values to fight a proposed anti-discrimination ordinance for Colorado Springs. They circulate drafts of a proposed constitutional amendment to forbid passage or enforcement of gay-rights laws in Colorado.
- July 31, 1991 Colorado for Family Values files the proposed ballot initiative and starts gathering signatures.
- March 20, 1992 Colorado for Family Values delivers petitions with 85,000 signatures to the state. Secretary of State Meyer rules there were enough valid signatures to put the initiative on the ballot. Because of its position on the ballot, the anti-gay amendment becomes known as Amendment 2.
- Nov. 3, 1992 On election day, Amendment 2 passes with 53.4 percent of the vote.
- Nov. 12, 1992 Legal team opposing Amendment 2 files complaint, *Evans et al. v. Romer*, in District Court, claiming the amendment is unconstitutional. The legal team, coordinated by Patrick Steadman and other members of CLIP, Colorado Legal Initiatives Project, includes David Miller, staff attorney for the ACLU of Colorado; attorneys from the national ACLU Lesbian and Gay Rights Project, Lambda Legal Defense and Education Fund, the cities of Denver, Boulder and Aspen; Jeanne Winer; lead attorney Jean Dubofsky; and Greg Eurich, an ACLU of Colorado cooperating attorney in practice at Holland & Hart.
- Dec. 23, 1992 Legal team opposing Amendment 2 files motion for an injunction in District Court.
- Jan. 15, 1993 District Court Judge Jeffrey Bayless grants the injunction. He believes the Amendment is likely to be ruled unconstitutional on the basis of the Equal Protection Clause of the Fourteenth Amendment. Injunction keeps the Amendment from being enforced until a trial on its merits is held. He holds the State to the standard of "strict scrutiny" because the Amendment concerns a fundamental constitutional right. (continued)

AMERICAN CIVIL LIBERTIES UNION OF COLORADO

Amendment 3 Timeline

Timeline of events related to Amendment 3 and the Colorado Civil Rights Commission.

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Amendment 2 Timeline

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- Jan. 19, 1993 State Attorney General's Office appeals the Bayless decision granting the injunction to the Colorado Supreme Court.
- July 19, 1993 Colorado Supreme Court upholds the injunction 6-to-1. In the affirming decision, the Court states that equal participation in the political process is a fundamental right and that this Amendment "fences out" an identifiable group of people from participating.
- Sept. 17, 1993 State Attorney General's Office appeals to U.S. Supreme Court.
- Oct. 12, 1993 *Evans et al. v. Romer* trial on the merits begins before Judge Bayless.
- Oct. 22, 1993 Trial before Judge Bayless ends.
- Nov. 1, 1993 U.S. Supreme Court refuses to hear State's appeal filed Sept. 17 at this stage of the case.
- Dec. 14, 1993 Judge Bayless rules that Amendment 2 is unconstitutional and that since equal participation in the political process is a fundamental right, it cannot be put to a vote of the people.
- May 9, 1994 Colorado Attorney General's Office submits the Opening Brief in its appeal to Colorado Supreme Court challenging Judge Bayless' decision.
- June 30, 1994 Colorado Supreme Court hears oral arguments.
- October 11, 1994 In a 6-to-1 decision, Colorado Supreme Court affirms lower court's ruling that Amendment 2 is unconstitutional.
- December 1994 Colorado Attorney General's Office appeals to the U.S. Supreme Court.
- February 21, 1995 U.S. Supreme Court decides to hear the Amendment 2 case. Oral argument will be heard on October 10, 1995, at 10:00 a.m. The decision will probably be announced in the spring of 1996.

Oct 10
Spring 96

Since the U.S. Court of Appeals for the Tenth Circuit has affirmed the decision of the Tenth Circuit, the Supreme Court will not review the case.

Colorado Supreme Court upheld the decision in 1992. In its opinion, the Court stated that equal participation in the political process is a fundamental right and that the Amendment "does not, as the state argues, deprive any group of people of basic participation."

The Attorney General's Office reports to U.S. Supreme Court.

As of 10/1/92, however, the case has not yet been heard by the Tenth Circuit.

There is no judicial review of the case.

U.S. Supreme Court will review the case. The case is currently at the stage of the case.

Justice Brandeis stated that "participation in the political process is a fundamental right, and that since equal participation in the political process is a fundamental right, it cannot be put to a vote of the people."

Colorado Attorney General's Office reports the U.S. Supreme Court will review the case. The case is currently at the stage of the case.

Colorado Supreme Court has not yet reviewed the case.

In a 5-4 decision, Colorado Supreme Court affirmed lower court's ruling that Amendment 2 is unconstitutional.

Colorado Attorney General's Office reports the U.S. Supreme Court will review the case.

U.S. Supreme Court has not yet reviewed the case. The case is currently at the stage of the case. The decision will be issued on October 10, 1992, or 10/10/92. The decision will probably be announced in the spring of 1993.

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